SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

Los Angeles Times Communications LLC, and Californians Aware, Petitioners,	)	Case No. BS138331
v.	)	**Decision and Order Granting Petition for Writ of Mandate and Other Relief**
Los Angeles Memorial Coliseum Commission, Respondent.	)	

On July 18, 2012, Petitioners Los Angeles Times Communications LLC ("Los Angeles Times") and Californians Aware, (collectively, "Petitioners"), filed this lawsuit against Respondent Los Angeles Memorial Coliseum Commission ("Commission" or "Respondent") for violations of the Ralph M. Brown Act ("Brown Act"), Gov. Code, § 54950 et seq., and the California Public Records Act ("CPRA"), Gov. Code, § 6250 et seq. Petitioners seek the following relief:

1. A declaratory judgment that the Commission violated the Brown Act on September 7, 2011, October 5, 2011, November 2, 2011, December 7, 2011, December 21, 2011, January 11, 2012, February 10, 2012, March 7, 2012, April 4, 2012, and May 14, 2012;
2. A writ of mandate ordering the Commission, among other things, to nullify its May 14, 2012 action approving a lease agreement with the University of Southern California ("USC"), produce certain documents, and record future Commission closed session meetings, under the Brown Act;
3. A writ of mandate ordering the Commission to disclose certain documents under the CPRA as well as a declaratory judgment that it violated the CPRA; and
4. Attorneys' fees and costs under Government Code § 6259 or Code of Civil Procedure § 1021.5.

On September 4, 2012, the Commission filed its Answer to the Petition and asserted seven affirmative defenses.

The matter was argued and submitted on October 3, 2013. The Court rules as follows:

Evidentiary Objections and the Request for Judicial Notice

The parties have raised hundreds of evidentiary objections. It is well settled that evidentiary objections must be specific and accompanied by a reasonable, definite statement of the grounds. See Evidence Code § 353 (a) (objections must "make clear the specific ground of the objection"); People v. Porter, (1947) 82 Cal. App.2d 585, 588 ("An objection must usually be specific and point out the ground or grounds relied upon in a manner sufficient to advise the trial court and opposing counsel of the alleged defect so that the ruling may be made understandingly

and the objection obviated if possible."). Thus, if a party objected to several sentences or an entire paragraph in a declaration and one of the sentences is not objectionable, or if a party raised a hearsay objection but the challenged statement could be offered for a non-hearsay purpose, the Court overruled the objection. Moreover, if a party objected to an exhibit that was not cited in a brief, the Court did not rule on the objection because the challenged exhibit was not considered by the Court. The Court's rulings on the parties' evidentiary objections are set forth in the separately attached orders. The Court disregards Paul Pringle's September 19, 2013 reply declaration and the attached Exhibits II and JJ.

The Commission's unopposed request for judicial notice of certain documents is granted if the exhibit was cited by the Commission in its opposition brief. Because only relevant evidence is admissible under Evidence Code § 350, the Court does not take judicial notice of those exhibits that were not cited by the Commission in its opposition brief. See Gbur v. Cohen, (1979) 93 Cal.App.3d 296, 301 (although a court may judicially notice a variety of matters, only relevant material may be noticed).

Background

The Commission is a joint powers authority, pursuant to a joint powers agreement between the City of Los Angles, County of Los Angeles, and the Sixth District Agricultural Association, an institution of the State of California, and known as the California Science Center. (Respondent's Answer to Petition, ¶ 4). Before transferring control to the University of Southern California ("USC"), the Commission managed, operated, and maintained the Los Angeles Memorial Coliseum and the Los Angeles Sports Arena. See People v. Shepherd, (1977) 74 Cal. App. 3d 334, 337 ("The Los Angeles Memorial Coliseum, though within the City of Los Angeles, is under the management of the Los Angeles Memorial Coliseum Commission, which was created by a joint powers agreement of the City of Los Angeles, the County of Los Angeles and the Sixth Agricultural Association."). It is undisputed that the Commission is subject to the Brown Act and the CPRA.

The Commission is governed by commissioners appointed by the City of Los Angeles, the County of Los Angeles, and the State of California. John Sandbrook ("Sandbrook") has been the Commission's Interim General Manager and Chief Administrative Officer since March 7, 2011. In September 2011, the Commission had two officers in addition to Sandbrook: Commission President David Israel and Vice President Don Knabe. In addition, the following individuals served as commissioners: Rick Caruso; William Chadwick; Barry Sanders; Mark Ridley-Thomas; Bernard Parks; Zev Yaroslavsky; and alternate Jonathan Williams.

In June 2011, Sandbrook informed the Commission that it was having financial difficulties and would not be able to comply with a 2008 agreement with USC regarding capital improvements agreed to by the Commission. In September 2011, the Commission voted to enter into formal negotiations with USC to renegotiate its May 14, 2008 lease with the Commission. Apparently, the 2008 lease required the Commission to provide USC with evidence "reasonably satisfactory to USC of the Coliseum having sources of financing sufficient to complete various projects referenced" in the lease. (Exhibit 253). According to Sandbrook, an "ad hoc negotiating team was formed" consisting of Commissioners Israel, Knabe, and Williams. (Sandbrook Dec., ¶ 49).

Shortly thereafter, the Commission's negotiating team members, Sandbrook, USC individuals (Todd Dickey, Kristina Raspe, Carol Dillon), and others signed a confidentiality agreement stating that the parties' discussions were subject to "all mediation and settlement privileges and protections." (Exhibit 14). There is no indication that the Commission approved this confidentiality agreement in open or closed session.

By letter written on October 4, 2011, USC provided formal notice of the Commission's default under the May 14, 2008 lease to "preserve the rights conferred to it." (Exhibit 15). However, it stated that "rest assured, USC has no intention of exercising its remedies under the Lease while USC and the Commission are negotiating in good faith toward a modified lease." (Id.).

The Challenged Closed Sessions

In their opening brief, Petitioners allege that the Commission conducted numerous secret deliberations concerning the Coliseum lease with USC. Specifically, Petitioners challenge the Commission's closed sessions under the real estate negotiations exemption of the Brown Act on the following nine dates: September 7, 2011, October 5, 2011, November 2, 2011, December 7, 2011, December 21, 2011, January 11, 2012, February 10, 2012, March 7, 2012, April 4, 2012. As reflected in the agendas attached as exhibit G to the Glasser declaration, the Commission went into closed session on each of these dates concerning both the Los Angeles Memorial Coliseum and the Los Angeles Sports Arena. The closed session items were listed on the agenda as "Conference with Real Property Negotiators" under Government Code Section 54956.8. The negotiators were Interim General Manager Sandbrook and "Designated Commission Members." Listed as the negotiating parties were the Coliseum Commission, the California Science Center, USC, Pac 12 conference and/or "other potential tenants/licensees." For the section "Under Negotiation," Respondent listed "Both Price and Terms of Payment." With the exception of the September 7, 2011 closed session meeting,[1] after meeting in closed session on each of these dates, the Commission returned to open session and noted that there were no reportable actions. The Court notes that the Commission went into closed session on each of these dates for extended periods of time ranging from almost four hours on September 7, 2011 to discuss five matters (including the two matters involving real property negotiations involving the Coliseum and the Sports Arena), to as little as one hour and twenty-five minutes on February 10, 2012 to discuss seven matters (including four matters involving real property negotiations).

Commissioner Bernard Parks attended the following closed sessions at issue in this lawsuit: September 7, 2011, October 5, 2011, November 2, 2011, December 7, 2011, January 11, 2012, February 10, 2012, March 7, 2012, and April 4, 2012. (Parks, ¶ 3). Parks stated that the Commission discussed the modified lease with USC at "several" of the closed session meetings. (Id., ¶ 4). Parks explained that the following topics were discussed during the closed sessions: the future of the Los Angeles Sports Arena; the duration and extension of the lease with USC; parking at the California Science Center Museum; the amount of access that community groups and members of the public would have for holding events at the Coliseum and Sports Arena

[1]When the Commission returned to open session on September 7, 2011, the Commission's president announced that in closed session the Commission had instructed its negotiators to meet with USC negotiators regarding modification of the lease agreement between the Commission and USC. The Commission's counsel stated that Commissioner Caruso recused himself because he is a member of the USC Board of Trustees. (Exhibit G, p. 14-12).

under the lease; naming rights for the Coliseum; the content and placement of advertisements at the Coliseum; environmental and land use issues regarding the potential demolition of the Sports Arena, including environmental impact reports; and historic preservation issues at the Coliseum." (Id., ¶ 6). By letter dated January 24, 2012, Commissioner Parks informed the Commission President that, among other things, the process concerning negotiations with USC should be public and that the Sports Arena should not be part of the deal. (Exhibit A).

During the Commission's closed session on September 7, 2011, it distributed and discussed a document from Commissioner Parks which contained 30 items. (Id., ¶ 5). Those items ranged from a discussion of whether USC would need the Commission's permission to add to the Coliseum's existing square footage or to change the fence line, protecting the Coliseum's historic landmark status, the color of the stadium, scheduling of events, fourth of July fireworks program, exploitation of trademarks, non-voting membership on the Exposition Park Board of Directors, to parking lots. (Id.).

In his deposition, Sandbrook admitted that certain items beyond "price" and "terms of payment" were discussed in closed sessions. For example, he testified that the Commission discussed "process" and whether USC was interested in a public meeting to discuss the terms of any lease modification in closed sessions. (Sandbrook Deposition, pp. 213-214, 259; Exhibit Z; PMK deposition, pp. 209-210; Exhibit H). Sandbrook also testified that the Commission discussed in closed session two events, an April 2012 music concert and an August 2012 free medical clinic event, that would be affected by the transfer of control to USC. (PMK Deposition, p. 231; Exhibit AA). Notably, the Commission has not submitted evidence from anyone that disputes Commissioner Parks' version of what occurred in closed session. In fact, Sandbrook confirms that topics ranging from environmental compliance to historic designation and community access were discussed in closed session. (Sandbrook Declaration, ¶¶ 67-68).

Release of Documents and Completion of the Lease Negotiations

On January 11, 2012, the Commission publicly released a written term sheet for the amended lease between the Commission and USC. (Sandbrook Declaration, ¶ 52; Exhibit 13). This twelve-page term sheet, exclusive of schedules, reflected many items other than price and payment terms such as capital improvements, naming rights for the Coliseum and the Sports Arena, events scheduling, USC's authority over film shoots, a potential sublease for one NFL team, USC's retention of existing Coliseum employees, the on-going role of the Commission including providing it with 90 complimentary tickets to USC games, the development and maintenance of a website for the display of photographs and memorabilia, the transfer of liquor licenses, and USC's right to demolish the Sports Arena. (Exhibit 13).

By letter dated January 13, 2012, Sandbrook wrote that the term sheet "lists the basic 'deal points' that have been discussed in the nine negotiation meetings between USC and the Coliseum commission from September 28 through January 3. . . . The Commission's announcement of December 21, 2011 had indicated that sufficient progress had been achieved in the negotiations such that the legal counsel for the Commission was being instructed to proceed with the drafting of a formal lease agreement. The drafting of the lease agreement is well underway and is

expected to be completed in the next few weeks and will also be made public before it is considered by the Commission and voted upon." (Exhibit HH).

On April 17, 2012 and April 24, 2012, the amended and restated lease (Exhibit 28) and update (Exhibit 29) were made available to the public by the Commission. (Sandbrook Declaration, ¶ 55).

The Commission's May 14, 2012 agenda stated that two items would be discussed in open session: possible action regarding the proposed lease with USC for the Coliseum and Sports Arena for a term ending December 31, 2054; associated findings regarding CEQA compliance and competitive bidding; a request to the State for a non-disturbance agreement; possible action regarding a proposed ten-year loan agreement with USC secured by the Commission's property at 3843 Grand Avenue; and related findings concerning CEQA compliance. (Exhibit 34). As reflected by the staff reports (Exhibits 35 and 36), Commission staff provided extensive documentation in connection with each item. Indeed, the mere summary of the proposed lease was 11 pages long and addressed 15 separate items. (Exhibit 13; 00364-00372).

The May 14, 2012 Commission staff report for the proposed lease with USC for the Coliseum and Sports Arena states that the Commission, at a board meeting on September 7, 2011, discussed the findings by consultant Bentley Management Group concerning a consulting report prepared by USC. (Exhibit 35; 00375). However, the Commission minutes from September 7, 2011 do not reflect any agenda item concerning the presentation or discussion of the BMG study in either open or closed session. (Exhibit G; 14 through 14-12). The May 14, 2012 Commission staff report also states the following: "The term sheet was presented to the Commission board for its regular meeting of December 7, 2011 and then discussed in detail at a special meeting held on December 21, 2011." (Exhibit 35; 00378) (emphasis added). However, the Commission minutes from December 7, 2011 and December 21, 2011 do not reflect any agenda item concerning the presentation or discussion of the Term Sheet in either open or closed session. (Exhibit G; 14-37-14-39, 14-42-14-43). Finally, the May 14, 2012 Commission staff report states that on the Commission's March 7, 2012 board meeting, it instructed Richard Volpert of Munger, Tolles and Olson "to initiate separate discussions with USC as to alternatives available to allow the Commission to monetize this asset [i.e., the freeway sign at 3843 Grand Avenue] in order to increase the Commission's working capital." (Exhibit 36; 00495). Again, the Commission minutes from March 7, 2012 do not reflect any agenda item concerning any instructions to Mr. Volpert. (Exhibit G; 14-68 through 14-69).

The Commission approved the amended and restated lease in open session on May 14, 2012. (Sandbrook Declaration, ¶ 58; Exhibit 37). Specifically, by a vote of eight to one, the Commission: approved the lease with USC for the use and management of the Coliseum and the Sports Arena through 2054; found that it is categorically exempt under CEQA; and found that "the use of competitive bidding under the circumstances would be undesirable, impractical or impossible." (Exhibit 37; 00639). From May 2012 through June 2013, USC and the State of California discussed other related terms. (Id., ¶¶ 59-61). On July 17, 2013, the Commission approved the amended and restated USC-Coliseum Commission lease; a subsequent amendment was approved on July 25, 2013. (Id., ¶¶ 62-64).

On June 4, 2012, Petitioner Los Angeles Times sent the Commission a letter demanding that the Commission cure its violation of the Brown Act at its May 14, 2012 meeting "based on deliberations that have taken place almost entirely in closed session." (Exhibit 39). Petitioner Californians Aware made a similar request on June 8, 2012. (Exhibit 42).

The CPRA Requests

Petitioners also challenge the Commission's responses to certain CPRA requests as discussed in more detail below. According to Sandbrook, the Los Angeles Times sent the Commission approximately 191 individual CPRA requests. Thomas Faughnan, counsel for the Commission, was the primary point of contact for the CPRA requests.

Analysis

1. **The Brown Act**

The purpose of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation by public bodies. Cohan v. City of Thousand Oaks, (1994) 30 Cal. App. 4th 547, 555. The Legislature's intent in enacting this law was explicitly set forth in Government Code section 54950: "It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." The term "deliberation" has been broadly construed to connote "not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision." Rowen v. Santa Clara Unified School Dist., (1981) 121 Cal. App. 3d 231, 234.

To these ends, the Brown Act imposes an "open meeting" requirement on local legislative bodies such as the Commission. Government Code § 54953(a). Regarding "regular meetings," section 54954 provides that the legislative body shall determine a regular time and place for holding its meetings. Agendas must be posted at least 72 hours before a regular meeting and contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session." Government Code § 54954.2(a)(1). With certain enumerated exceptions, no action or discussion shall be undertaken on any item not appearing on the posted agenda. Government Code section 54954.2(a)(2) (regular meeting), section 54956 (special meetings).

The Brown Act authorizes closed sessions to be held with regard to certain matters. For example, one of the matters which may be discussed in a closed session is real property negotiations. Government Code § 54956.8. Indeed, the Brown Act expressly provides that "a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease." Government Code § 54956.8. However, statutory exceptions authorizing closed sessions of legislative bodies are construed narrowly and the Brown Act "sunshine law" is construed

liberally in favor of openness in conducting public business. Bell v. Vista Unified School Dist., (2000) 82 Cal. App. 4th 672, 682.

Under the plain language of Government Code section 54957.7(a), a legislative body in a properly noticed closed session may consider only those matters covered in its statement at an open meeting of the item or items to be discussed in closed session. "Subdivision (b) of the same section states that after any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by section 54957.1 of action taken in the closed session (e.g., approval of an agreement concluding real estate negotiations, within specified time frames)." Shapiro v. San Diego City Council, (2002) 96 Cal. App. 4th 904, 917.

Under the Brown Act, any "interested person" may seek mandamus to stop or prevent violations or threatened violations of the Brown Act or to determine the Act's application to actions or threatened future actions of the local agency. Government Code § 54960(a). Individuals may also bring a mandamus action for a judicial determination nullifying a local agency action taken in violation of the Brown Act. § 54960.1(a). To state a cause of action for violation of section 54960.1 of the Brown Act, a petitioner must allege: (1) that a legislative body of a local agency violated one or more enumerated Brown Act statutes; (2) that there was "action taken" by the local legislative body in connection with the violation; and (3) that before commencing the action, plaintiff made a timely demand of the legislative body to cure or correct the action alleged to have been taken in violation of the enumerated statutes, and the legislative body did not cure or correct the challenged action. Bell v. Vista Unified School Dist., (2000) 82 Cal.App.4th 672, 684.

a. The Commission's Closed Sessions

The Court finds that the Commission violated the Brown Act on at least nine occasions (September 7, 2011, October 5, 2011, November 2, 2011, December 7, 2011, December 21, 2011, January 11, 2012, February 10, 2012, March 7, 2012, and April 4, 2012) by discussing in closed session many topics beyond "price" and "terms of payment" that are permitted under the real estate negotiations exemption. As discussed above, Commissioner Parks declared that he was present on all of these dates (except for December 21, 2011) when the following topics were discussed in closed session: the future of the Los Angeles Sports Arena; the duration and extension of the lease with USC; parking at the California Science Center Museum; the amount of access that community groups and members of the public would have for holding events at the Coliseum and Sports Arena under the lease; naming rights for the Coliseum; the content and placement of advertisements at the Coliseum; environmental and land use issues regarding the potential demolition of the Sports Arena, including environmental impact reports; and historic preservation issues at the Coliseum. (Parks Declaration, ¶¶ 3-6.).

As for topics discussed at the December 21, 2011 meeting, the May 14, 2012 Commission staff report explicitly states that the term sheet was presented to the Commission for its "regular meeting of December 7, 2011 and then discussed in detail at a special meeting held on December 21, 2011." (Exhibit 35; 00378) (emphasis added). However, the Commission minutes from December 7, 2011 and December 21, 2011 do not reflect any agenda item concerning the

presentation or discussion of the term sheet in either open or closed session. (Exhibit G; 14-37-14-39, 14-42-14-43). The twelve-plus page term sheet reflects many items other than price and payment terms such as capital improvements, naming rights for the Coliseum and the Sports Arena, events scheduling, USC's authority over film shoots, a potential sublease for one NFL team, USC's retention of existing Coliseum employees, the on-going role of the Commission including providing it with 90 complimentary tickets to USC games, the development and maintenance of a website for the display of photographs and memorabilia, the transfer of liquor licenses, and USC's right to demolish the Sports Arena. (Exhibit 13). Moreover, Sandbrook's deposition testimony and declaration corroborate the extensive nature of the Commission's discussions in closed session, as discussed above.

In sum, not only has the Commission discussed in closed session many topics beyond price and terms of payment, the facts lead directly to the inference that the Commission's members had reached their consensus about the terms and wisdom of the deal with USC through nonpublic discussions that occurred among them before their May 14, 2012 vote in open session. These actions violated the Brown Act.

b. The Real Property Negotiations Exception

Unable to refute the evidence concerning what was discussed in closed session, or that the Commission reached a collective commitment to approve the deal in closed session, the Commission argues that its actions were proper because Government Code section 54956.8 authorizes it to hold closed sessions with its negotiators to discuss the price and terms of payment for leases.[2] To be sure, the real property exception in the Brown Act permits public agencies to meet in closed session to advise its negotiator concerning the "price" and "terms of payment" in connection with the purchase, sale, lease or exchange of property by or for the agency. Here, however, the Commission's interpretation of what it can discuss under this narrow exception would decimate the letter and spirit of the Brown Act.

It bears repeating that statutory exceptions authorizing closed sessions of public bodies are construed narrowly and the Brown Act "sunshine law" is construed liberally in favor of openness in conducting public business. Bell v. Vista Unified School Dist., (2000) 82 Cal. App. 4th 672, 682. In addition, as a matter of statutory interpretation, the Brown Act's closed session rules must be read in conjunction with the more general rules in the Brown Act applicable to the conduct of public business. See Rudd v. California Casualty Gen. Ins. Co., (1990) 219 Cal. App. 3d 948, 952. For example, section 54954.2, subdivision (a), applicable to regular meetings, requires the legislative body to post an agenda containing a "brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."

The Commission's interpretation of the real estate exception has been rejected by courts and the Attorney General. For example, in Shapiro v. San Diego City Council, (2002) 96 Cal. App. 4th

[2] The Court does not accept Petitioners' argument that the Commission's attempt to rely on the real estate negotiations exception is barred. The Commission's second affirmative defense (Actions in Accordance with Law) could be interpreted to include exceptions under the Brown Act. To the extent that this affirmative defense is vague or ambiguous, Petitioners did not demur to the Commission's answer.

904, 920-921, the court rejected the same arguments advanced by the Commission in this litigation:

> To support its position, the City Council refers to the need for a confidential bargaining position when dealing with sophisticated buyers and sellers in a high profile project, in order to give adequate instructions to the negotiator acting for the city. (§ 54956.8.) . . . Even assuming such a balancing process is appropriate in this instance, when we compare, as did the trial court, the published agendas with the confidential minutes for the closed sessions, we can only conclude that such a balance should be struck in favor of public disclosure in this instance, in compliance with both the letter and the spirit of the Brown Act. As found by the trial court, the agenda items noticed related only to City negotiations with designated representatives from the Padres and the Port District regarding real property interests in the East Village area, or Qualcomm Stadium, or the Centre City East area. Under the plain language of section 54956.8, the City Council gave notice of its intent to hold a closed session with its negotiator, prior to the purchase or other transaction of real property, to the extent that the local agency wished to grant authority to its negotiator regarding the price and terms of payment for the purchase/transaction. Under section 54954.2, subdivision (a), members of the legislative body or its staff may ask questions for clarifications or report on related activities, etc. However, there is nothing in the statutory scheme that grants an unlimited scope of authority to the City Council, in conducting such business, to determine what discussions it may deem to be related background information that is essential to the particular transaction in real property, for purposes of giving instructions to a negotiator about that transaction.
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> In this case, the actual discussions in closed session extended to topics such as briefing on land acquisition matters, design work of architects, engineers, and infrastructure and parking developments. Also, such topics as capping interim expenses, environmental impact report considerations, issues of alternative sites, traffic, naming rights, expert consultants and staff were discussed. Such policy considerations as the impact of the ballpark project on the homeless were discussed at closed session. All these topics confirm the City's position that this redevelopment project, as memorialized in the MOU and related agreements, is indeed a complex real estate based transaction. That characterization, however, does not negate the requirements of the Brown Act when agenda items are noticed concerning real estate interests, such as purchase and sale of real property on which the anticipated development will be located.
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> Rather, the closely related issues of the agenda items to be disclosed, including for a closed session, and the scope of the legislative body's discussions that may take place within such specific closed sessions, must be considered together. The scope of the permissible discussion in the closed sessions should be defined by the notice given in the agenda and the public announcements, together with the rule against discussing items not identified in the agenda. (§§ 54954.2, subd. (a)(2), 54957.7, subd. (a).) Those statutory constraints must be read together with

> section 54956.8, which provides a narrowly defined exception to the rule of open meetings, for the purpose of giving instructions to the negotiators concerning a particularized and realistically anticipated transaction that the City may complete, whether as an individualized transaction or as part of a larger one. The City Council cannot claim substantial compliance under the safe harbor provisions of section 54954.5, subdivision (b), when its anticipated project discussions exceed the scope of the safe harbor notice provisions, and do not involve a specific and identifiable piece of property under discussion, but rather range far afield of a specific buying and selling decision that the negotiator is instructed to work toward.
>
> If we were to accept the City's interpretation of the Brown Act in this respect, we would be turning the Brown Act on its head . . . we believe that in this case, the City Council is attempting to use the Brown Act as a shield against public disclosure of its consideration of important public policy issues, of the type that are inevitably raised whenever such a large public redevelopment real estate based transaction is contemplated. The important policy considerations of the Brown Act, however, must be enforced, even where particular transactions do not fit neatly within its statutory categories. In this case, the trial court reached an appropriate balance in applying the Brown Act to this particular set of circumstances.

96 Cal. App. 4th 904, 920-921.

The Attorney General has also rejected the Commission's interpretation of the real estate exception:

> Consulting the dictionary to give the statutory language its 'usual, ordinary import,' we believe that the word 'price' in this context must be understood as the amount of consideration given or sought in exchange for the real property rights that are at stake. Further, we believe that the phrase 'terms of payment' is best understood as the form, manner, and timing upon which the agreed-upon price is to be paid--for example, an all-cash transaction (either up-front or in installments), a seller-financed mortgage, an exchange of property or property rights, or the like. It is significant that the word 'terms is immediately modified by the words 'of payment.' In our view, this modification rules out any possibility that the statute is meant to authorize closed-session discussions of any and all terms of the transaction as a whole.

94 Ops. Cal. Atty. Gen. 82 (2011). The Attorney General explained that "an expansive reading of what is meant by 'price' would render virtually meaningless the phrase 'terms of payment,' because payment terms themselves commonly affect the price that a party may be willing to pay or accept. We are not free to construe a statute in a manner that would render any words or phrases redundant." Id.

For similar reasons, the Court finds that the Commission's discussion of the following matters in closed session were improper: the future of the Los Angeles Sports Arena; the duration and

extension of the lease with USC; parking at the California Science Center Museum; the amount of access that community groups and members of the public would have for holding events at the Coliseum and Sports Arena under the lease; naming rights for the Coliseum; the content and placement of advertisements at the Coliseum; environmental and land use issues regarding the potential demolition of the Sports Arena, including environmental impact reports; historic preservation issues at the Coliseum; and other non-price and non-terms of payment topics addressed in the term sheet.

c. The Remedy

Several avenues of judicial relief are available to address violations of the Brown Act. To assist in enforcement of the open meeting laws, the law provides for criminal penalties and civil injunctive or declaratory relief. Government Code §§ 54959, 54960.; see also, e.g., California Alliance for Utility etc. Education v. City of San Diego, (1997) 56 Cal. App. 4th 1024, 1030 (plaintiff is entitled to declaratory relief where an actual controversy exists over "past compliance with the Brown Act".) In addition, actions taken in violation of the Brown Act may be declared null and void by a court. Government Code § 54960.1. However, even where a plaintiff has satisfied the threshold procedural requirements to set aside an agency's action, Brown Act violations will not necessarily invalidate a decision; the plaintiff must show prejudice. San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist., (2006) 139 Cal. App. 4th 1356, 1409-1410.

In light of the Commission's refusal to admit any wrongdoing, its aversion to transparency, its troubling contention that Commissioner Parks was not permitted to reveal illegal conduct without its permission, and Sandbrook's false testimony that certain closed session agenda items noted as anticipated litigation related to the negotiations with USC over the amendment of the lease (Sandbrook Deposition, pp. 201, 205-209, 211-212, 219; Exhibits CC, G, GG), the Court finds that the Commission will continue its unlawful practices. Accordingly, the Court shall enter a declaratory judgment that the Commission violated the Brown Act on the dates and for the reasons indicated above.

In addition, a peremptory writ of mandate shall issue enjoining the Commission from the following: violating its duty to limit discussions at any closed session where the real property negotiations exception is invoked to instructions to its negotiators regarding price and terms of payment for the purchase, sale, exchange or lease of specific real property by or for the Commission under Government Code section 54956.8; and, unless expressly allowed by the Brown Act, from undertaking any action or discussion on any item not appearing on the posted agenda under Government Code section 54954.2(a)(2) (regular meeting) and/or section 54956 (special meetings).

Finally, under Government Code section 54960, the Commission shall for three years from entry of judgment audio record all future closed sessions. Each recording shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recordings.

The Court denies Petitioners' request to declare the Commission's May 14, 2012 vote null and void under section 54960.1. First, the Court cannot find that the Commission took any action, or made a collective commitment or promise, during their closed sessions in March 2012 and April, 2012, or any date thereafter. In fact, it appears that most of the Commission's closed session collective actions or commitments took place by, or shortly after, the term sheet was released to the public in January 2012. Second, given the Commission's prior public release of the term sheet and the proposed amended lease agreement, the Commission's staff's extensive reports for the May 14, 2012 open session meeting, the fact that interested persons appeared at the May 14, 2012 meeting and presented their views concerning the approval of the lease with USC (Exhibit 37), and the post-May 14, 2012 lease amendments, the Court cannot find that the Petitioners or other interested persons were prejudiced by the Commission's public vote to approve the amended and restated lease agreement on May 14, 2012.

2. The CPRA Requests

The CPRA was enacted in 1968 and is modeled after the federal Freedom of Information Act (FOIA) (5 U.S.C. § 552 et seq.). See County of Los Angeles v. Superior Court (Axelrad), (2000) 82 Cal. App. 4th 819, 825. The CPRA was enacted "for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies." Filarsky v. Superior Court, (2002) 28 Cal.4th 419, 425. In enacting the CPRA, the Legislature declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Government Code section 6250. As the California Supreme Court has explained: "Openness in government is essential to the functioning of a democracy. Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court, (2007) 42 Cal.4th 319, 328–329. Indeed, the principle of access to government information is enshrined in Article I, Section 3, subdivision (b)(1), of the California Constitution: "The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."

The CPRA makes clear that every person has a right to inspect any public record. Government Code section 6253(a). The term "public record" is broadly defined to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Government code section 6252(e). "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Id., § 6252(g). Given the strong public policy of the people's right to information concerning the people's business (Gov. Code § 6250), and the constitutional mandate to construe statutes limiting the right of access narrowly (Cal. Const., art. I, § 3, subd. (b)(2)), "all public records are

subject to disclosure unless the Legislature has expressly provided to the contrary." Office of Inspector General v. Superior Court, (2010) 189 Cal.App.4th 695, 709.

The right to inspect public records is subject to certain exemptions found in Government Code sections 6254 and 6255, which are narrowly construed. City of Hemet v. Superior Court, (1995) 37 Cal. App. 4th 1411, 1425. For example, under Section 6254(a) preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business are exempt if the public interest in withholding those records clearly outweighs the public interest in disclosure. In addition, Section 6254(b) exempts records pertaining to pending litigation to which the public agency is a party until the pending litigation has been finally adjudicated or otherwise settled. Under the "catch-all" exemption set forth in Section 6255, a record need not be produced where the facts of the particular case demonstrate that the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. The burden of proof is on the proponent of nondisclosure, who must demonstrate a clear overbalance on the side of confidentiality. See California State University, Fresno Assn., Inc. v. Superior Court, (2001) 90 Cal. App. 4th 810, 831-832.

Here, Petitioners contend that the Commission has improperly refused to produce, or delayed in producing, certain records in violation of the CPRA. The Court agrees as set forth below.

a. Documents between Sandbrook and USC

On February 1, 2012, Petitioner Los Angeles Times requested copies of all communications between Sandbrook and USC from September 1, 2011 to "date." (Exhibit Q to the Dunn Declaration). The Commission has refused and continues to refuse to provide any document responsive to this request that relates to "lease settlement negotiations" under the pending litigation and public policy exemptions. The Commission's contentions are meritless and these documents should be produced forthwith.

First, the new lease agreement with USC was approved at a public meeting on May 14, 2012. Indeed, Sandbrook concedes that on July 25, 2013, USC and the Commission executed the second amendment to the lease agreement. Since this CPRA request only sought documents through February 1, 2012, there is no basis for withholding these documents under either of the Commission's cited exemptions at this point in time. Certainly, there is no threatened litigation by USC as of 2013. Put another way, since the negotiations with USC were completed months and months ago, there is no compelling reason why public scrutiny of this process cannot take place at this time.

Second, there is a significant public interest in the disclosure of these documents. Indeed, it is puzzling that a Commission that has been pummeled by allegations of financial misconduct and mismanagement would seek to hide documents from the public which will shed light on its decision to transfer its most important and public assets to a private university. Certainly the public has a legitimate and substantial interest in scrutinizing the process leading to the Commission's deal with USC for the use and management of the iconic Los Angels Memorial Coliseum and the Los Angeles Sports Arena to ensure that the decision was not based on political favoritism or some other criteria that do not serve the public. To paraphrase the late

Justice Louis Brandeis, sunlight is said to be the best of disinfectants. Whether the Commission gave away the store for free will be for others to judge and is beyond the scope of this lawsuit.

b. Documents Concerning Recommendations on Compensation Changes and Contributions to Retirement Accounts

On October 26, 2011, the Los Angeles Times requested documents referenced by Sandbrook in connection with an October 26, 2011 Commission meeting. Specifically, the document provided during the open session was titled "Los Angeles Memorial Coliseum Commission Staff Compensation—Overview" and stated that "particular recommendations will be provided in a separate document." (Exhibit S). Sandbrook's statement in his declaration that this document was earmarked for a closed session discussion is not supported by Exhibits 2 and 3. Exhibit 2, the agenda for October 26, 2011 shows that the only closed session item was "conference with Labor Negotiator." (Exhibit 2). The item, "Review of Compensation Components for Coliseum/Sports Arena staff" was listed as a regular agenda item before the closed session item. (Id.). These documents should be produced.

By a request dated September 12, 2011, the Los Angels Times requests documents concerning the Commission's failure to make certain contributions to employees' accounts. (Exhibit R). The Commission responded by asserting that it had insufficient information to respond to this request. However, Sandbrook's deposition testimony indicates that he determined that this request related to the former general manager's authorization for cash payments. Thus, to the extent that the Commission has not produced documents that existed as of September 12, 2011, they should be produced.

c. ROK America Records

The Commission states that it complied with the Los Angeles Times' November 4, 2011 CPRA request (Exhibit T). However, Sandbrook's deposition testimony shows that its efforts were not comprehensive. For example, Sandbrook testified that he does not recall if trash or subject folders were searched. Thus, the Commission shall conduct a through search of its records, including its e-mail server and any computer used by Leopold Caudillo, to determine if there are any additional documents responsive to this request.

d. Delays in Producing Documents

Petitioners also seek a declaratory judgment that the Commission violated the CPRA by unlawfully withholding or delaying the production of certain requested documents. The Court finds that the following documents were improperly withheld or production of the following documents was unreasonably delayed:

(i) The Mercer Report. Although requested in October 2011, documents responsive to this request were not produced until January 2013 and February 2013 when Mercer decided to waive its purported confidential/trade secret claim. Even if well-taken, there was no good cause for why it took the Commission this long to obtain this waiver. The testimony by the Commission's counsel, Thomas Faughnan, that he and

outside counsel engaged in a "dialogue' with Mercer's counsel until Mercer consented to the production is vague and not persuasive. Notably, the August 22, 2011 engagement letter agreement between Mercer and the Commission provided that the confidential information restriction provision does not apply to information that the receiving party "must disclose by laws or legal process." (Exhibit 160, p. 01939). The Commission fails to address this provision in its agreement with Mercer.

(ii) The SingerLewak Report. On October 4, 2011, the Los Angeles Times made a CPRA request for the SingerLewak report evaluating financial controls at the Coliseum "[w]hen it is available." (Exhibit 153). The draft report was prepared and given to the Coliseum on October 27, 2011 (Sandbrook declaration, ¶ 41), but not provided to the Los Angeles Times until after it filed this lawsuit. (Id., ¶ 44). The Commission did not properly rely on the draft or public policy exemptions. First, the report eventually disclosed was not a customarily discarded draft but the one and only final report. Second, there is no merit to the Commission's contention that the public would have been "mislead' by the report. Instead, it is appears that the Commission withheld the report from the public because it was embarrassing to the Commission.

(iii) The Commission has also engaged in a pattern of producing documents under the CPRA long after they were due as reflected by the following requests: ROK America documents (requested November 4, 2011, produced June 28, 2012); payments to consultants, auditors and lawyers (requested December 14, 2011, produced on June 4, 2012); Ronald Lederkramer's purchase of equipment on his personal credit card (requested July 19, 2011, produced December 2, 2011); and the Ridley-Thomas documents regarding football tickets (requested September 20, 2011, produced November 23, 2011 and December 16, 2011).

Disposition

In connection with Petitioners' Brown Act claims, a declaratory judgment shall issue in Petitioners' favor because the Commission violated the Brown Act on September 7, 2011, October 5, 2011, November 2, 2011, December 7, 2011, December 21, 2011, January 11, 2012, February 10, 2012, March 7, 2012, and April 4, 2012, by discussing matters in closed session that were not limited to the price and terms of payment regarding its lease negotiations with USC. In addition, a writ of mandate and injunction shall issue requiring the Commission to audio record all future closed sessions for three years following entry of judgment, and to maintain those recordings according to law. The Commission is also enjoined from: (1) discussing in closed session under the real estate negotiations exception any matter other than granting authority to its negotiators regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property; and (2) unless expressly allowed by the Brown Act, from undertaking any action or discussion on any item not appearing on the posted agenda.

In connection with the CPRA claims, a declaratory judgment shall issue in the Los Angeles Times' favor because the Commission violated the CPRA by unlawfully withholding or delaying the production of documents as discussed above. In addition, the Commission shall produce the records that were noted above.

Petitioners are the prevailing parties. Counsel for the Los Angeles Times shall file and serve a proposed judgment and a proposed writ of mandate within 10 days with a proof of service showing that they were served on all parties of record. The clerk shall provide notice to counsel of record.

IT IS SO ORDERED.

October 4, 2013.

Luis A. Lavin
Judge of the Superior Court of California